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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **DANIEL RODRIGUEZ**
14 **52233 Oasis Palms Avenue**
15 **Coachella, CA 92236**

16 **Pharmacy Technician Registration No. TCH**
17 **53054**

18 Respondent.

Case No. 5291

OAH No. 2016100582

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about June 7, 2016, Complainant Virginia K. Herold, in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed First
22 Amended Accusation No. 5291 against Daniel Rodriguez (Respondent) before the Board of
23 Pharmacy. (First Amended Accusation is attached as Exhibit A.)

24 2. On or about April 8, 2004, the Board of Pharmacy (Board) issued Pharmacy
25 Technician Registration No. TCH 53054 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 5291
27 and expired on February 29, 2016.

28 3. On or about June 13, 2016, Respondent was served by Certified and First Class Mail
copies of First Amended Accusation No. 5291, Supplemental Statement to Respondent, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is: 52233 Oasis Palms Avenue, Coachella, CA 92236.

5 4. Service of the First Amended Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
7 Code section 124.

8 5. On or about December 23, 2014, Respondent signed and returned a Notice of
9 Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at
10 Respondent's address of record and it informed him that an administrative hearing in this matter
11 was scheduled for February 7, 2017. Respondent failed to appear at that hearing.

12 6. Government Code section 11506(c) states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense . . . and the notice shall be deemed a specific denial of all
15 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
16 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
17 discretion may nevertheless grant a hearing.

18 7. California Government Code section 11520(a) states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense . . . or to appear at
20 the hearing, the agency may take action based upon the respondent's express
21 admissions or upon other evidence and affidavits may be used as evidence without
22 any notice to respondent

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in First Amended Accusation No.
28 5291, finds that the charges and allegations in First Amended Accusation No. 5291, are separately
and severally, found to be true and correct by clear and convincing evidence.

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1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$5,834.52 as of February 3, 2017.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Daniel Rodriguez has subjected
6 his Pharmacy Technician Registration No. TCH 53054 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 Registration based upon the following violations alleged in the Accusation which are supported
10 by the evidence contained in the Default Decision Evidence Packet in this case:

11 a. Respondent has subjected his pharmacy technician registration to discipline under
12 Code section 4301, subdivisions (f) and (o), in that on February 15, 2012, Respondent attempted
13 to obtain hydrocodone without a prescription in violation of Code section 4060, by
14 misrepresentation, and concealment of material fact, an act involving moral turpitude, dishonesty,
15 fraud, deceit, and corruption.

16 b. Respondent has subjected his pharmacy technician registration to discipline under
17 Code section 4301, subdivision (j), in that Respondent violated Health and Safety Code section
18 11173 subdivision (a), in that he attempted to obtain controlled substances by fraud,
19 misrepresentation or subterfuge.

20 c. Respondent has subjected his pharmacy technician registration to discipline under
21 Code sections 490 and 4301(l) in that on or about June 26, 2015, Respondent was convicted on
22 his plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the
23 influence, violating Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood
24 alcohol content (BAC) of 0.08 or more, and violating Penal Code section 148(A)(1), willful
25 resisting/obstructing an officer.

26 d. Respondent has subjected his pharmacy technician registration to discipline under
27 Code section 4301(h) in that on or about March 29, 2015, Respondent used alcoholic beverages to

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1 an extent or in a manner that was dangerous and injurious to himself and others when he drove
2 his vehicle while under the influence of alcohol.

3 ORDER

4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 53054, heretofore
5 issued to Respondent Daniel Rodriguez, is revoked.

6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
7 written motion requesting that the Decision be vacated and stating the grounds relied on within
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
9 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

10 This Decision shall become effective at 5:00 p.m. on April 7, 2017.

11 It is so ORDERED on March 8, 2017.

12
13 BOARD OF PHARMACY
14 DEPARTMENT OF CONSUMER AFFAIRS
15 STATE OF CALIFORNIA

16 

17
18 By _____

Amy Gutierrez, Pharm.D.
Board President

19 81585038.DOC
20 ID:SD2014707864

21 Attachment:
22 Exhibit A: First Amended Accusation
23
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Exhibit A

First Amended Accusation

(DANIEL RODRIGUEZ)

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 5291

12 **DANIEL RODRIGUEZ**
13 **52233 Oasis Palms Avenue**
14 **Coachella, CA 92236**

FIRST AMENDED ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
53054

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in
21 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
22 Consumer Affairs.

23 2. On April 8, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician
24 Registration Number TCH 53054 to Daniel Rodriguez (Respondent). Respondent has also been
25 known as Daniel Urias Rodriguez, Jr. The Pharmacy Technician Registration was in full force
26 and effect at all times relevant to the charges brought herein and expired on February 29, 2016.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Code section 118, subdivision (b) provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

5. Code section 4011 provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Code section 4300, subdivision (a) provides that every license issued by the Board may be suspended or revoked.

7. Code section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

8. Code section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of

1 the crime in order to fix the degree of discipline or to determine if the conviction
2 is substantially related to the qualifications, functions, and duties of the licensee in
3 question.

4 As used in this section, 'license' includes 'certificate,' 'permit,'
5 'authority,' and 'registration.'

6 10. Section 4022 of the Code states

7 "Dangerous drug" or "dangerous device" means any drug or device unsafe
8 for self-use in humans or animals, and includes the following:

9 (a) Any drug that bears the legend: "Caution: federal law prohibits
10 dispensing without prescription," "Rx only," or words of similar import.

11 (b) Any device that bears the statement: "Caution: federal law restricts
12 this device to sale by or on the order of a _____," "Rx only," or words of
13 similar import, the blank to be filled in with the designation of the practitioner
14 licensed to use or order use of the device.

15 (c) Any other drug or device that by federal or state law can be
16 lawfully dispensed only on prescription or furnished pursuant to Section 4006.

17 11. Section 4060 of the Code states:

18 No person shall possess any controlled substance, except that furnished to
19 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
22 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
23 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
24 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
25 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
26 section shall not apply to the possession of any controlled substance by a
27 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
28 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

12. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of
unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but
is not limited to, any of the following:

....

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1 (f) The commission of any act involving moral turpitude, dishonesty,
2 fraud, deceit, or corruption, whether the act is committed in the course of relations
3 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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5 (h) The administering to oneself, of any controlled substance, or the use of
6 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
7 dangerous or injurious to oneself, to a person holding a license under this chapter,
8 or to any other person or to the public, or to the extent that the use impairs the
9 ability of the person to conduct with safety to the public the practice authorized by
10 the license.

11 ...

12 (j) The violation of any of the statutes of this state, or any other state, or of
13 the United States regulating controlled substances and dangerous drugs.

14

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. The record of conviction of a
17 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
18 States Code regulating controlled substances or of a violation of the statutes of this
19 state regulating controlled substances or dangerous drugs shall be conclusive
20 evidence of unprofessional conduct. In all other cases, the record of conviction
21 shall be conclusive evidence only of the fact that the conviction occurred. The
22 board may inquire into the circumstances surrounding the commission of the crime,
23 in order to fix the degree of discipline or, in the case of a conviction not involving
24 controlled substances or dangerous drugs, to determine if the conviction is of an
25 offense substantially related to the qualifications, functions, and duties of a licensee
26 under this chapter. A plea or verdict of guilty or a conviction following a plea of
27 nolo contendere is deemed to be a conviction within the meaning of this provision.
28 The board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

....

13. Health & Safety Code section 11173, subdivision (a) states:

No person shall obtain or attempt to obtain controlled substances, or
procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
concealment of a material fact.

14. Health & Safety Code section 11377, subdivision (a) states:

Except as authorized by law and otherwise provided in subdivision (b) or section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (3), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

16. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

17. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
3 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
4 may be included in a stipulated settlement.

5 **DRUG AT ISSUE**

6 18. Hydrocodone is a Schedule II controlled substance as designated by Health and
7 Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug pursuant to Code
8 section 4022.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Fraudulently Attempted to Obtain Controlled Substance Without a Prescription)**

11 19. Respondent subjected his pharmacy technician registration to discipline under
12 Code section 4301, subdivisions (f) and (o), in that on February 15, 2012, Respondent attempted
13 to obtain hydrocodone without a prescription in violation of Code section 4060, by
14 misrepresentation, and concealment of material fact, an act involving moral turpitude, dishonesty,
15 fraud, deceit, and corruption. The circumstances are as follows:

16 a. On February 15, 2012, Respondent drove up to the drive thru of a Rite Aid
17 Pharmacy in Indio, California, and handed a note to a pharmacy technician allegedly to pick-up a
18 prescription for hydrocodone and antibiotics for a neighbor. When the pharmacy technician
19 looked up the prescription in the computer, the prescription for hydrocodone and antibiotics had
20 been deleted. The pharmacy technician then recalled that on February 14, 2012, their store took a
21 similar prescription for hydrocodone and antibiotics for the same name. At that time, the
22 pharmacy technician called the alleged prescribing physician who confirmed that the prescription
23 was not authorized. Concerned that this was another fraudulent prescription, the pharmacy
24 technician reported the situation to the Indio Police Department. Before the police arrived,
25 Respondent drove away. Nonetheless, Respondent called to pick up the fraudulent prescription
26 later that night. On February 16, 2012, Respondent returned to the pharmacy and attempted to
27 pick-up the prescription. The attending pharmacy technician took note of Respondent's car
28 license plate number. The car's registration was traced to Respondent, who had been identified in

1 multiple photographic line-ups. Respondent was arrested on a felony charge for violation of
2 Health & Safety Code section 11173, subdivision (a), attempting to obtain controlled substances,
3 or attempting to procure the administration of or prescription for controlled substances, (1) by
4 fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

5 b. On July 15, 2014, in a criminal proceeding entitled *The People of the State*
6 *of California vs. Daniel Urias Rodriguez Jr*, in Riverside County Superior Court, Larson Justice
7 Center, Criminal Division Case Number INF1300768, pursuant to a plea agreement, Respondent
8 was convicted on his plea of guilty to violating Penal Code (PC) section 415, subdivision (2),
9 maliciously disturbing another person by loud noise, an infraction, in exchange for the dismissal
10 of the charge for violating Health & Safety Code section 11377, subdivision (a), possession of a
11 controlled substance without the prescription of a physician.

12 c. On July 15, 2013, as a result of Respondent's guilty plea, Respondent was
13 ordered to pay a fine.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Violation of Drug Laws)**

16 20. Respondent is subject to disciplinary action under Code section 4301, subdivision
17 (j), for unprofessional conduct in that Respondent violated Health and Safety Code section 11173
18 subdivision (a), a statute of the State of California regulating controlled substances and
19 dangerous drugs, in that he attempted to obtain controlled substances by fraud, misrepresentation
20 or subterfuge as detailed in paragraph 19, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(June 26, 2015 Criminal Conviction for DUI on March 29, 2015)**

23 21. Respondent is subject to disciplinary action under Code sections 490 and 4301(I)
24 for conviction of a crime substantially related to the qualifications, functions, or duties of a
25 pharmacy technician, as more particularly alleged below:

26 a. On or about June 26, 2015, in the criminal proceeding entitled *People v.*
27 *Daniel Urias Rodriguez, Jr.*, Riverside County Superior Court, Case Number INM1503192,
28 Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152,

1 subdivision (a), driving under the influence, a misdemeanor; violating Vehicle Code section
2 23152, subdivision (b), driving a vehicle with a blood alcohol content (BAC) of 0.08 or more, a
3 misdemeanor; and violating Penal Code section 148(A)(1), willful resisting/obstructing an
4 officer, a misdemeanor.

5 b. The facts and circumstances surrounding the conviction are that on or
6 about March 29, 2015, around 7:00 a.m., an officer from the Riverside County Sheriff's
7 Department was guarding the perimeter of a crime scene and had blocked off an intersection in
8 the City of Coachella in Riverside, California. Respondent approached the blocked intersection
9 in his vehicle and was told that the intersection was closed. Respondent informed the officer that
10 he lived up the road and the officer told Respondent that he could not drive through the crime
11 scene and that he would have to park his car and walk to his home. Respondent said okay, but
12 proceeded to drive towards the blocked intersection. Officer s stopped Respondent's vehicle and
13 removed Respondent from the car. Officers smelled a strong odor of alcohol coming from
14 Respondent and his eyes were watery and bloodshot. Respondent could barely stand on his feet
15 and failed the field sobriety tests given to him. At approximately 8:48 a.m., Respondent blew a
16 .11% BAC on a breathalyzer test.

17 c. As a result of the conviction, Respondent was sentenced to serve 1 day in
18 jail, placed on summary probation for 36 months, ordered to complete a first offender DUI
19 program for 3 months, submit to biological fluid testing and ordered to pay various fines and
20 restitution.

21 d. On or about February 26, 2016, the Riverside Superior Court issued an
22 order revoking Respondent's probation after he was terminated from his first offender DUI
23 program and set a hearing date for March 28, 2016.

24 e. On or about March 28, 2016, Respondent failed to appear at the hearing
25 regarding his termination from the first offender DUI program and the Riverside Superior Court
26 issued a bench warrant for Respondent's arrest for his failure to appear in court.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcoholic Beverage in a Dangerous Manner)**

3 22. Respondent is subject to disciplinary action under Code section 4301(h) for
4 unprofessional conduct in that on or about March 29, 2015, Respondent used alcoholic beverages
5 to an extent or in a manner that was dangerous and injurious to himself and others when he drove
6 his vehicle while under the influence of alcohol as described in paragraph 21, above.

7 **PRAYER**


8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 53054,
11 issued to Daniel Rodriguez;

12 2. Ordering Daniel Rodriguez to pay the Board of Pharmacy the reasonable costs of
13 the investigation and enforcement of this case, pursuant to Business and Professions Code
14 section 125.3; and

15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 6/7/16


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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